

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LUIS FERNANDO MAZARIEGOS,

Petitioner,

v.

Case No. 07-C-319

ROBERT HUMPHREYS, Warden,

Respondent.

**ORDER DENYING WITHOUT PREJUDICE PETITIONER'S MOTION FOR STAY
AND PETITION TO HOLD IN ABEYANCE**

On April 4, 2007, the petitioner, Luis Fernando Mazariegos ("Mazariegos"), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 12, 2007, United States District Judge William C. Griesbach, to whom this action was originally assigned, issued an order pursuant to Rule 4 of the Rules Governing § 2254 Cases. On May 1, 2007, this action was reassigned to this court based on the parties' consent to proceed before a magistrate judge, and on May 2, 2007, this court entered an amended scheduling order. Thereafter, on May 25, 2007, the respondent filed a motion to dismiss Mazariegos's petition for a writ of habeas corpus and a motion to stay the time for the respondent to file his answer to the petition. On May 29, 2007, this court granted the respondent's motion to stay and issued a briefing schedule to govern the respondent's motion to dismiss. Under that schedule the petitioner is to file his response to the motion to dismiss on or before June 25, 2007. On June 5, 2007, the respondent filed a document captioned "Motion for Stay and Petition for Abeyance on 28 U.S.C. § 2254 Federal Habeas Proceedings Pending Exhaustion of

Unexhausted Constitutional Claims in the State of Wisconsin's Court of Appeals and the Supreme Court."

The petitioner's motion will be denied without prejudice. Simply stated, the respondent's motion to dismiss essentially asserts that the petitioner has procedurally defaulted all of his claims and that therefore there are no state court remedies available to him. Such being the case, it would make no sense to enter a stay on Mazariegos's federal habeas corpus petition at this time. Instead, the petitioner should file his brief in opposition to the respondent's motion to dismiss in accordance with the court-issued briefing schedule, i.e., on or before June 25, 2007. Depending upon the court's ruling on that motion, Mazariegos may very well be entitled to re-file a motion to stay in order to allow him to exhaust available state court remedies, if any.

NOW THEREFORE IT IS ORDERED that petitioner Mazariegos's motion to stay and petition for abeyance be and hereby is **DENIED WITHOUT PREJUDICE**.

SO ORDERED this 7th day of June 2007, at Milwaukee, Wisconsin.

/s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge